IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1947 OF 2007

Sampat Narayan Mankar & ors. ..Petitioners

Vs.

The State of Maharashtra ..Respondent

Mr. Uday Warunjikar for petitioners.
Ms. S.V. Gajare, APP for State.

CORAM: B.H. MARLAPALLE,J.

Reserved on : October 18, 2007.

Pronounced on : October 25, 2007.

P.C.:

1. The petitioners came to be arrested on 16/5/2006 in connection with C.R. No. 111 of 2006 registered with the Haveli Police Station, Pune for the offence punishable under Section 302 read with Section 34 of IPC and since then they are in jail as under-trial prisoners. They were produced before the learned Judicial Magistrate, First Class, Court No.7 at Pune on 17/5/2006 and were remanded to police custody and thereafter they were granted magisterial custody. Charge-sheet came to be filed on 11/8/2006 and on or about 14/8/2006 they submitted an

application for bail under Section 167 (2) of Cr.P.C. read with Section 309 therein contending that when the charge-sheet was filed they were not produced before the court on 11/8/2006, a copy of the charge-sheet was not received by them, the charge-sheet filed on 11/8/2006 was incomplete charge-sheet without any statements of witnesses and, therefore, they ought to have been released on 14/8/2006 as the complete charge-sheet was not filed within 90 days. This application came to be rejected by the learned JMFC on 13/9/2006.

2. Aggrieved by the said order, the petitioners filed Criminal Revision Application No. 713 of 2006 which also came to be dismissed by the learned Additional Sessions Judge, Pune on 1/11/2006. Thereafter, the petitioner no.1 approached this court in Criminal Application No. 580 of 2007 and prayed for being released on bail. By considering the investigation papers and more particularly the statements of the witnesses recorded, this court was pleased to reject the bail application on 30/4/2007. This petition filed under Article 227 of the Constitution read with Section 482 of Cr.P.C. prays

for quashing and setting aside the order passed by the learned JMFC on 13/9/2006 and confirmed by the learned Additional Sessions Judge, Pune in Criminal Revision Application No. 713 of 2006 by his judgment dated 1/11/2006. Obviously, this is also an application for bail by implications.

3. Mr. Warunjikar the learned counsel for the petitioners advanced the very same grounds before this court as well, namely, a complete charge-sheet was not filed within 90 days and the charge-sheet having been filed on 11/8/2006 was incomplete and, therefore, it could not be said to be a charge-sheet filed within 90 days and when the charge-sheet was filed on 11/8/2006 the petitioners were not produced before the court. The learned JMFC held that the charge-sheet was filed within 90 days and, therefore, the petitioners were not entitled for bail in default as there was no default as such. The learned Additional Sessions Judge has agreed with this view. In the case of Baburao Raghunath Patil and ors. Vs. State of Maharashtra **[1993 (2) Mh.L.J. 1299]**, this court by referring to the earlier decisions in the case of Shravan w/o Waman Nade Vs. State of Maharashtra **[1976**

Mh.L.J. 654] and Abdul Wahed Vs. State of Maharashtra **[1991 Mah.L.J. 1219]**, has held, inter alia, that the right granted to the accused for being released on bail under proviso (a) to Sub-section (2) of Section 167 of Cr.P.C. is not an absolute or indefeasible right, which cannot be diverted or obliterated by filing of a chargesheet and such a right may be lost on filing of the chargesheet. It was further held that merely because the chargesheet was filed after the statutory period mentioned in proviso (a) to Sub-Section (2) of Section 167 of Cr.P.C., the accused does not continue to enjoy the right of being released on bail under the siad provision.

4. In the instant case the chargesheet has been filed on 11/8/2006 and the application for bail was presented on 14/8/2006 on the ground that the chargesheet filed on 11/8/2006 was incomplete and when the chargesheet was filed the petitioners were not produced before the learned JMFC. The release contemplated under Section 167(2) of Cr.P.C. cannot be claimed on the ground that the chargesheet filed in time was defective or incomplete and subsequently it

was replaced. It is not an absolute right and, therefore, the application has been rightly rejected. The learned APP has also relied upon the Division Bench decision of this court in the case of Rohini Mahavir Godse vs. State of Maharashtra and ors.

[1996 (2) Mh.L.J. 492].

5. I am satisfied that both the courts below did not commit any error apparent on the face of the record and the order rejecting the bail application by the learned JMFC cannot be termed as perverse. In any case the petitioner no.1 had approached this court in Criminal Application No. 580 of 2007 and the same was dismissed on merits by order dated 30/4/2007. This second bail application is sought to be agitated, not on merits, but on the technical error of default in submitting the charge-sheet within a period of 90 days.

6. The petition is rejected summarily.

(B.H. Marlapalle,J.)